



Legal Division MS A390  
PO Box 2229  
Sacramento, CA 95812-2229

### **September 2011 Franchise Tax Board Public Litigation Roster**

All currently active cases and those recently closed are listed on the roster. Activity or changes with respect to a case appear in bold-face type. Any new cases will appear in bold-face type.

A list of new cases that have been added to the roster for the month is also provided, as well as a list of cases that have been closed and will be dropped from the next report.

The Franchise Tax Board posts the Litigation Roster on its Internet site. The Litigation Roster can be found at: <http://www.ftb.ca.gov/law/litrstr/index.shtml>.

The Litigation Rosters for the last four years may be found on the Internet site.

FRANCHISE AND INCOME TAX  
Closed Cases – September 2011

Case Name

Court Number

FRANCHISE AND INCOME TAX  
New Cases –September 2011

Case Name

Court Number

Stephen & Vickory Cherner

Los Angeles County Superior Court Case No.  
BC469768

FRANCHISE AND INCOME TAX  
MONTHLY PUBLIC LITIGATION ROSTER

September 2011

APPLE, INC. v. Franchise Tax Board	
San Francisco Superior Court Case No. CGC08471129	
Court of Appeal, 1 <sup>st</sup> Appellate District Case No. A128091	Filed – 01/16/08
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Jeffrey M. Vesely	Kristian Whitten
Pillsbury, Winthrop, Shaw, Pittman, LLP	

Issues: 1. Whether the Franchise Tax Board properly determined the order in which dividends are paid from earnings and profits.  
2. Whether the Franchise Tax Board improperly allocated and disallowed interest.

Year: 09/30/89 Amount  
\$231,038.00 Tax

Status: Motion to Dismiss Plaintiff's Appeal filed by FTB on April 28, 2010. Proposed briefing schedule filed by joint proposal on May 6, 2010, and accepted by the Court on May 11, 2010. Apple, Inc.'s opposition to Motion to Dismiss Appeal filed May 13, 2010. Record on appeal and notice of record was filed on May 18, 2010. Court of Appeal denied FTB's motion to dismiss appeal on May 26, 2010, and will consider issue as part of the merits of the case. On June 6, 2010, the Court deferred ruling on Apple Inc.'s request for judicial notice filed on May 13, 2010; the Court will decide this matter when it rules on the merits of the case. Plaintiff/Appellant, Apple Inc., filed its opening brief on August 6, 2010. A Motion to Consolidate Appeals A128091 and A129090 for purposes of Oral Argument was filed on August 18, 2010, and granted on August 24, 2010. Respondent's Opening Brief was filed October 5, 2010. Apple timely filed its Reply Brief. FTB filed its Reply Brief as Cross-Appellant on February 1, 2011. The Case is now fully briefed. The Request for Oral Argument was filed on March 21, 2011 by FTB. The Record to Court for Review was sent on April 13, 2011. On August 23, 2011, the Case was argued and submitted. On September 12, 2011, the Court of Appeal issued a published Opinion affirming the Trial Court Judgment. On September 26, 2011, Apple filed a Petition for Rehearing.

BAKERSFIELD MALL, LLC v. Franchise Tax Board	
San Francisco Superior Court Case No. CGC07462728	
	Filed – 04/25/07
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Amy L. Silverstein, Edwin Antolin	Marguerite Stricklin
Silverstein & Pomerantz, LLP	

Issues: 1. Whether the LLC fee imposed on an LLC doing business entirely within California by Rev. Tax. Code §17942 is unconstitutional under the due process, equal protection and commerce clauses of the U.S. Constitution.  
2. Whether Rev. Tax. Code §17942 violates Article XIII, section 26 of the California Constitution.

3. Whether Rev. Tax. Code §17942 constitutes an invalid exercise of state police power and is void.

Years: 2000 through 2004

Amount: \$56,537.00 Tax

Status: Complex Litigation (TELEPHONIC) Case Management Conference, previously set for July 20, 2010, was continued to August 16, 2010. On August 16, 2010, the Complex Litigation Matter was removed from the calendar and continued to December 6, 2010. On December 1, 2010, a Joint Case Conference Statement was filed by Plaintiff. On December 6, 2010, a Complex Litigation Case Management Conference was held and continued to January 25, 2011. The January 25, 2011, Case Management Conference was continued to July 14, 2011. On June 16, 2011, a Notice of Continued Case Management Conference was filed by FTB. On July 14, 2011, the Case Management Conference was held and continued to October 3, 2011.

BANKS, KENNETH v. Franchise Tax Board San Francisco Superior Court Case No.CGC09484981 <u>Taxpayer's Counsel</u> Stephen Moskowitz, Esq. Law Offices of Stephen Moskowitz, LLP	Filed - 02/13/09 <u>FTB's Counsel</u> Lucy Wang
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Issue: Whether Plaintiff was a Resident of California during 1995.

Year: 1995

Amount: \$276,096.00 Tax

Status: On May 12, 2010, a Notice of Time and Place of Trial was issued by the Court scheduling trial for September 20, 2010. Trial and related Mandatory Settlement Conference were thereafter continued to different dates. A Settlement Conference was concluded on May 16, 2011, with the case not settling. Trial commenced on May 23, 2011. On May 24, 2011, the Witness List was filed, the Exhibit List was filed, evidence was received and Trial was continued to July 7, 2011, for the presentation of closing briefs. On July 12, 2011 a Tentative Decision was issued in favor of FTB. On August 4, 2011, the Court ordered Judgment to be entered in FTB's favor and that FTB shall recover Reasonable Costs of Suit. On August 22, 2011, FTB filed a Notice of Entry of Judgment.

BUNZL DISTRIBUTION v. Franchise Tax Board San Francisco Superior Court Case No.CGC10506344 <u>Taxpayer's Counsel</u> William F. Colgin Kimberley M. Reeder William Clayton Morgan, Lewis, & Bockius, LLP	Filed - 12/17/10 <u>FTB's Counsel</u> Kris Whitten Karen Yiu
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- Issue:
1. Whether FTB properly included the California factors attributable to certain single-member LLCs when calculating the taxpayer's apportionment percentages.
  2. Whether FTB properly included the single-member LLC's in the taxpayer's combined report.
  3. Whether the FTB Settlement Bureau conducts itself with reckless disregard for Board published procedures?
  4. Whether the policies and/or procedures of the FTB Settlement Bureau constitute improper underground regulations.

Year: 2005

Amount  
\$1,368,734.00 Tax  
\$128,562.00 Interest

Status: Summons and Complaint served on FTB December 21, 2010. FTB's Demurrer to the Complaint was heard on March 1, 2011. The Demurrer was sustained in part and overruled in part. The Answer was filed May 11, 2011. On May 26, 2011, a Case Management Statement was filed by FTB. On May 27, 2011, a Case Management Statement was filed by Plaintiff. On June 10, 2011, an Order Continuing Case Management Conference was filed resetting the conference for August 12, 2011. On June 14, 2011, the Answer to Cross Complaint was filed by the Cross-Defendant, Bunzl. On July 8, 2011, a Joint Notice of Agreement to Accept Service Electronically was filed by Bunzl. FTB filed a Case Management Statement on July 18, 2011. Bunzl Distribution filed a Case Management Statement on July 18, 2011. On July 28, 2011, the August 12, 2011, Case Management Conference was cancelled. On July 18, 2011, the trial was set for June 18, 2012. The Mandatory Settlement Conference is set for June 1, 2012.

CA-CENTERSIDE II, LLC v. Franchise Tax Board  
Fresno Superior Court Case No. 10CECG00434  
Taxpayer's Counsel  
Amy L. Silverstein, Edwin Antolin  
Silverstein & Pomerantz, LLP

Filed: 02/04/10

FTB's Counsel  
Amy Winn

- Issues:
1. Whether the LLC fee imposed on an LLC doing business entirely within California by Rev. Tax. Code §17942 is unconstitutional under the due process, equal protection and commerce clauses of the U.S. Constitution.
  2. Whether Rev. Tax. Code §17942 violates Article XIII, section 26, of the California Constitution.
  3. Whether Rev. Tax. Code §17942 constitutes an invalid exercise of state police power and is void.

Years: 2000 through 2005

Amount  
\$65,201.00 Tax

Status: Defendant's Demurrer and Memorandum of Points and Authorities in Support of Demurrer was filed on April 23, 2010. The hearing on Demurrer was held and the matter taken under submission on August 12, 2010. The Case Management Conference was originally set for August 23, 2010. On August 18, 2010 a Minute Order was issued by Judge Franson, overruling the Demurrer with 45 days to answer, and scheduling Status Conference for October 13, 2010. On October 13, 2010, FTB and CA-Centerside stipulated that FTB shall have fifteen court days to file and serve its answer to the First Amended Complaint from the Decision of the Court of Appeal on FTB's Petition for Writ of Mandate. Petition for Writ of Mandate was denied October 10, 2010. Request for Judicial Notice was denied October 20, 2010. FTB filed its Answer to the First Amended Complaint on November 8, 2010. On July 22, 2011, Plaintiff's First Set of Special Interrogatories to Defendant FTB were submitted. On July 22, 2011, Plaintiff's First Set of Form Interrogatories were served. On July 22, 2011, Plaintiff's First Set of Demands for Production, Inspection, and Copying of Documents was served. On July 22, 2011, Plaintiff's first Set of Requests for Admission to Defendant FTB were served. On July 22, 2011, Declaration of Johanna Roberts in Support of Additional Discovery was served.

STEPHEN & VICKORY CHERNER v. Franchise Tax Board  
Los Angeles Superior Court Case No. BC469768  
Taxpayer's Counsel  
Laura G. Brys  
Burris, Schoenberg & Walden, LLP

Filed: 09/16/11

FTB's Counsel  
Shane Hofeling

**Issues:** 1. Whether the Franchise Tax Board properly denied/withheld Plaintiff's Claim for Refund?  
2. Whether the Franchise Tax Board properly handled and diligently processed taxpayers 2005 Amnesty Penalty Application?

**Years:** 1990, 2005

**Amount**  
\$

**Status:** Summons & Complaint filed September 16, 2011.

CUTLER, FRANK v. Franchise Tax Board  
Los Angeles Superior Court Case No. BC421864  
Taxpayer's Counsel  
Marty Dakessian  
Reed Smith LLP

Filed - 09/15/09  
FTB's Counsel  
Christine Zarifarian

**Issues:** 1. Whether California's Qualified Small Business Stock Deferral of Tax Provisions violate the Commerce Clause and Due Process Requirements of the United States Constitution.  
2. Whether Plaintiff is entitled to a refund of taxes and interest paid to FTB.  
3. Whether the Amnesty Penalty violates the Due Process Clause of the United States and California Constitutions.  
4. Whether Plaintiff is entitled to attorneys' fees and costs under RTC 19717 and/or CCP 1021.5.

**Year:** 1998

**Amount:** \$200,182.00 Tax  
\$47,600.00 Penalty

**Status:** On June 8, 2010, Defendant/FTB filed a Notice of Entry of Order Approving Stipulation extending the time for parties to file and serve cross-motions for Summary Judgment. Hearing on the cross motions for Summary Judgment occurred on September 8, 2010. On May 2, 2011, an Order was issued granting FTB's Motion for Summary Judgment or in the Alternative Summary Adjudication. On May 3, 2011, the Notice of Entry of Order Denying Plaintiff's Motion for Summary Judgment was filed. On May 3, 2011, the Notice of Entry of Order on FTB's Motion for Summary Judgment or in the Alternative Summary Adjudication was filed. On May 5, 2011, Plaintiff's Notice of Ex-Parte Application and Application Requesting Order Clarifying Orders on Cross Motions for Summary Judgment was filed. On May 18, 2011 a Judgment, Minute Order, and Request for Dismissal were filed. The Order denied the Plaintiff's Motion for Summary Adjudication, granted Defendant's Motion for Summary Judgment, and granted Plaintiff's Request for Dismissal of the Fourth Cause of Action. On June 14, 2011, a Notice of Appeal combined with Election to Proceed was filed by the Plaintiff. On June 30, 2011, a Notice to Reporters to Prepare the Transcript on

**Appeal was filed. Plaintiff has requested an Extension of Time to File their Opening Brief until November 21, 2011.**

DANIEL V INC. v. Franchise Tax Board		
Los Angeles Superior Court Case No. BC457301		
Filed – 03/14/11		
<u>Taxpayer's Counsel</u>	<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Marty Dakessian	Anthony Sgherzi	Eric Brown
Reed Smith LLP		

- Issues:
1. Whether Appellant has demonstrated the amnesty-related penalties assessed for the 1997 and 1998 tax years should be abated?
  2. Whether Appellant has demonstrated a late filing penalty assessed for the 1997 tax year should be abated.
  3. Whether Daniel V has demonstrated where it's commercial domicile was located.

<u>Years:</u>	1997	<u>Amount:</u>	Tax:	\$40,759.23
			Interest:	\$56,388.57
			Late Filing Penalty	\$10,189.80
			Amnesty Penalty	\$16,076.42
			Total:	\$123,414.02
	1998		Tax:	\$840,010.32
			Interest:	\$1,073,439.12
			Late Filing Penalty	\$0.00
			Amnesty Penalty	\$237,050.56
			Total:	\$2,150,500.00

Status: Summons and Complaint served March 14, 2011. Answer to the Complaint filed April 12, 2011. On May 3, 2011, FTB sent the First Set of Special Interrogatories to Daniel V. FTB also sent a Demand for Production of Documents . On June 21, 2011, Daniel V's Response to Defendant's First Set of Interrogatories was sent. On July 12, 2011, Plaintiff Responded to the Request for Production of Documents. Trial is scheduled for July 16, 2012. The Final Status Conference is on July 6, 2012. The Parties are to participate in a non-binding Mediation during January 2012. A Post-Mediation Status Conference is scheduled for February 6, 2012

DICON FIBEROPTICS, INC. v. Franchise Tax Board		
Los Angeles Superior Court Case No. BC367885		
Court of Appeal, 2 <sup>nd</sup> Appellate District Case No. B202997		
California Supreme Court Case No. S173860		
Filed – 03/13/07		
<u>Taxpayer's Counsel</u>	<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Thomas R. Freeman, Paul S. Chan, Marty Dakessian		W. Dean Freeman
Bird, Marella, Boxer, Wolpert, Reed Smith LLP		
Nessim, Drooks & Lincenberg, P.C.		

- Issues:
1. Whether Franchise Tax Board properly denied EZ Credits claimed by Plaintiff.



2. Whether Franchise Tax Board has authority to look behind vouchers issued by Local Enterprise Zone coordinator.

Year: Ending 03/31/07

Amount: \$1,104,992.00 Tax

Status: Defendant/Respondent's Reply Brief was filed on May 7, 2010. Amicus Curiae Brief filed on June 10, 2010, by California Taxpayers' Association in support of Appellant. The Response to the Amicus Curiae Brief was filed June 29, 2010. On July 26, 2010, a Reply Brief on the Merits was filed. On July 26, 2010, an Answer to the Amicus Brief was filed. The parties are waiting for the Supreme Court to schedule Oral Arguments on the matter.

Dennis A Dodenhoff v. Franchise Tax Board  
Yolo County Superior Court Case No. PT11-993

Filed - 05/02/11

Taxpayer's Counsel

Dennis A. Dodenhoff, In Pro Per

FTB's Counsel

Robert Asperger

Issues: 1. Whether Plaintiff can recover Pecuniary Property taken by force under color of the law.  
2. Whether Plaintiff can Petition for Exemplary Damages and an Injunction to prevent Agency action not authorized by law.

Years: 1992, 1993, 1999, 2000-2008

Amount: \$99,273.45

Status: Summons and Complaint were personally served on FTB on May 9, 2011. The Plaintiff filed suit in Yolo County Superior Court. This suit follows Small Claims Case No. CV CL 10-526 filed in Yolo County on December 28, 2010, which was decided against Plaintiff. On March 16, 2011, FTB petitioned the Court for dismissal via written correspondence. A Notice of Judgment was entered on April 15, 2011, stating that Dennis Dodenhoff was not owed any monies from any named defendant. The Plaintiff also filed a claim with the California Victim Compensation and Government Claims Board (VCGCB). On April 1, 2011, The VCGCB sent a letter stating that they will act on Plaintiff's Claim. On June 8, 2011, FTB's Demurrer and Motion to Strike the Yolo County Superior Court action were filed, and set for Hearing on August 25, 2011. On August 5, 2011, Plaintiff filed Plaintiff's Rebuttal to Defendant's Demurrer. On August 17, 2011, Reply Memorandum of Points and Authorities in Support of Demurrer and Motion to Strike by Defendant FTB was filed. On August 25, 2011, a Tentative Ruling Sustaining Defendant's Demurrer was filed. Plaintiff filed an Amended Complaint on August 30, 2011. On September 23, 2011, a Notice of Hearing on Demurrer By Defendant FTB to First Amended Complaint; Demurrer; Memorandum of Points and Authorities was filed.

BENJAMIN R. AND CARMELA DU v. Franchise Tax Board

Los Angeles Superior Court Case No. BC391413

Filed - 05/23/08

Court of Appeal, 2<sup>nd</sup> Appellate District Case No. B213971 (consolidated with Mickelsen & Shimmon  
California Supreme Court Case No. S173860

Taxpayer's Counsel

Charles P. Rettig, Steven Toscher

Sharyn M. Fisk & Michael R. Stein

Hochman, Salkin, Rettig, Toscher & Perez, P.C.

FTB's Counsel

W. Dean Freeman

Issues: Whether Plaintiffs are entitled to interest suspension under Revenue & Taxation Code section 19116.

Year: 1999

Amount: \$288,938.00 Interest

Status: On October 26, 2010, the Court of Appeal issued an Opinion Affirming Judgments against the Dus' and the Shimmons'. The Judgment against the Mickelsens' was reversed. The Respondent was awarded it's the costs incurred in the Du and Shimmon appeals. Plaintiff's filed a Petition for Rehearing filed on November 10, 2010. The Petition for Rehearing was denied on November 18, 2010. Plaintiff/Appellant timely filed a Petition for Review with the California Supreme Court. The Petition for Review was denied on February 2, 2011. The Remittitur was issued February 9, 2011. FTB has prevailed in the Petitions filed by Du and Shimmon. The suit filed by Micklesen has been remanded to the Superior Court for further proceedings.

WILLIAM B. & LAURA K. ELCOCK v. Franchise Tax Board  
Alameda Superior Court Case No. RG 11570953  
Taxpayer's Counsel  
William E. Taggart  
Taggart & Hawkins.

Filed – 04/14/11  
FTB's Counsel  
Karen Yiu

Issue: Whether Plaintiff was entitled to refunds for tax years 2003-2006 for Non-Qualified Stock Options (NQSO's).

Year: 2003

Amount: \$87,209.00Tax  
\$21,802.00 Penalty  
2004 \$15,282.00Tax  
\$3,820.00 Penalty  
2005 \$28,585.00 Tax  
2006 \$89,822.00

Status: Summons and Complaint filed April 14, 2011. On May 17, 2011, the Stipulation and Proposed Order to Transfer Case was filed. On June 24, 2011, FTB's Demurrer to Plaintiff's Complaint, Notice of Hearing thereon, and Pleading in Support thereof was filed. On September 8, 2011, Case Management Conference Statement was filed. On September 16, 2011, FTB's Index of Non-California Authorities in Support of Demurrer to Complaint was filed. On September 16, 2011, FTB's Reply in Support of Demurrer to Complaint was filed. Plaintiff's Opposition to Demurrer was filed on September 17, 2011. On September 23, 2011, the Court sustained the FTB's Demurrer to the First, Second and Third Causes of Action without Leave to Amend and dismissed those three causes of action. Case is proceeding on one remaining Cause of Action.

ELS EDUCATIONAL SERVICES, INC. v. Franchise Tax Board  
Sacramento Superior Court Case No. 07AS03070  
Court of Appeal, 3<sup>rd</sup> Appellate District Case No. C063450  
Taxpayer's Counsel  
Robert R. Rubin  
Boutin & Jones Inc.

Filed – 07/05/07  
FTB's Counsel  
Robert Asperger

Issue: Whether Plaintiff was entitled for California purposes, to elect out of treatment provided by section 338(h)(10) of the Internal Revenue Code.

Year: 08/28/97

Amount: \$630,615.97 Tax

Status: Record on Appeal filed on March 30, 2010. Appellant's Opening Brief was timely filed July 22, 2010. On September 29, 2010, a Request for Judicial Notice was filed by Respondent. Respondent's Brief was filed September 29, 2010. On October 1, 2010, the ruling on the Request for Judicial Notice was deferred. The case became fully briefed on January 26, 2011. Oral Argument Waiver Notice sent on June 14, 2011. FTB did not request Oral Argument and neither did ELS. On August 11, 2011, the Court of Appeal ruled in FTB's favor. On August 17, 2011, Respondent filed a Petition for Rehearing. On August 23, 2011, an Order Denying Petition for Rehearing was filed. On September 6, 2011, an Order Denying Publication was filed. On September 6, 2011, a letter was sent to the Supreme Court requesting denial of the applicant's request to publish the Opinion.

GENERAL MILLS, INC. & SUBSIDIARIES v. Franchise Tax Board		
San Francisco Superior Court Case No. CGC05439929		Filed - 03/29/05
Court of Appeal, 1 <sup>st</sup> Appellate District Case No. A120492		
California Supreme Court Case No. S173180		
<u>Taxpayer's Counsel</u>	<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Paul H. Frankel	Andres Vallejo,	Joyce Hee
Morrison & Foerster LLP	Morrison & Foerster LLP	

Issues:

1. Whether the Plaintiffs' payroll factor was properly computed by excluding foreign employee stock options.
2. Whether the Plaintiffs' sales factor was properly calculated by excluding receipts from commodities transactions and short-term financial instruments.
3. Whether federal RAR adjustments were properly taken into account.

Years: 1992 through 1997

Amount: \$3,950,026.00 Tax

Status: Trial commenced on April 9, 2010. Closing arguments were concluded on June 2, 2010. Post-Trial briefing and exchanges regarding proposed statements of Decision occurred through September 2010. On October 6, 2010, the Court ordered the matter be deemed under submission. On November 1, 2010, a Tentative Statement of Decision was issued in favor of FTB. On December 17, 2010, an Order to Extend Time to Enter Judgment and Require Responses to Judgment was filed. On January 10, 2011, Judgment was entered in favor of FTB. Notice of Appeal was filed on March 17, 2011. On April 12, 2011, the Exhibits and Depositions from Trial on Remand were returned to respective Counsel. On April 12, 2011, an Order granting Application, admitting as Counsel Pro Hac Vice for Appellant, was filed. On April 26, 2011, The Court of Appeal certified the record. General Mills brief is due August 4, 2011. FTB's Brief is due November 4, 2011 and General Mills Reply Brief will be due December 26, 2011. On July 21, 2011, Appellant filed its Opening Brief in the Court of Appeal, First Appellate District. On September 14, 2011, an Application for Extension of Time to File its Opening Brief was filed by FTB.

THE GILLETTE COMPANY & SUBSIDIARIES v. Franchise Tax Board	
San Francisco Superior Court Case No. CGC10495911	Filed 01/11/10
Court of Appeal First District Court Case No. A130803	
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts	Lucy Wang
Silverstein & Pomerantz, LLP	

Issues:

1. Whether California's Amendment of Rev. & Tax. Code § 25128 in 1993 is precluded by California's participation in the Multistate Tax Compact.
2. Whether California's denial of Plaintiff's claim for refund, premised upon the claim that the 1993 amendment to Rev. & Tax. Code § 25128 is precluded by California's participation in the Multistate Tax Compact, violates the U.S. Constitution and the California Constitution.

Years: 1997 through 2004 Amount \$4,137,591.00

Status: On May 27, 2010, a Complex Litigation Case Management Conference was held; the Court ordered the matters consolidated, and the Complex Litigation Hearing, including the hearing on FTB's Demurrers was continued to October 7, 2010. This case is now consolidated with the actions filed on behalf of Jones Apparel Group, Inc. and Subsidiaries, Kimberly-Clark World Wide, Inc. & Subsidiaries; Procter & Gamble Manufacturing Co. & Affiliates; RB Holdings (USA) Inc. & Subsidiaries; and Sigma-Aldrich Corp. & Subsidiaries, all of which involve the same legal issues. On October 7, 2010, the Complex Litigation Hearing on FTB's Demurrer to Complaint was held. The Court sustained the Demurrers without leave to amend. On October 26, 2010, the Order on the Demurrer was filed. The Notice of Entry of Order was filed on November 2, 2010. On December 2, 2010, A Notice of Appeal/Request for Preparation of Transcript was filed on behalf of Gillette. The Certification of the Appeal Record was mailed on January 24, 2011. In February a Joint Stipulation Extending Time for Filing Briefs was filed allowing both Appellants and Respondent sixty additional days within which to file their respective briefs. On May 4, 2011, Appellant filed its Opening Brief. On August 9, 2011, Respondent's Brief was filed. On August 9, 2011, Respondent's Opposition to Appellants' Request for Judicial Notice was filed. On August 9, 2011, Respondent's Appendix in Support of Respondent's Brief was filed. On August 9, 2011, Respondent's Request for Judicial Notice, Motion, Memorandum and Supporting Papers Volume 1 of 2 was filed. On August 9, 2011, a Proposed Order Granting Respondent's Request for Judicial Notice was filed. Appellant's Reply Brief is to be filed during October 2011.

GOLDMAN, STEPHEN J. AND AZITA ETAATI v. Franchise Tax Board	
Alameda County Superior Court Case No. RG09441003	Filed - 03/12/09
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts	David Lew
Silverstein & Pomerantz, LLP	

Issue: The issue is whether a self-reporting taxpayer participating in the Voluntary Compliance Initiative (VCI) is entitled to interest suspension under Revenue and Taxation Code section 19116.

Year: 2000

Amount: \$823,950.00 Interest

Status: Case Management Conference held on April 7, 2010. Hearing on Motions for Summary Judgment held on April 7, 2010. Order granting Franchise Tax Board's Motion for Summary Judgment filed April 22, 2010. Judgment was filed and entered on May 14, 2010. The Notice of Appeal and designation of the record was filed July 2, 2010. A Notice to the Attorney regarding the Notice of Appeal was filed on July 7, 2010, as was the Notice to the Court Reporter to prepare the Transcripts. The Appellant's Opening Brief was filed December 17, 2010. FTB filed its Respondent's Brief on March 17, 2011. In March a Joint Stipulation was filed allowing Appellant's sixty days to file Appellant's Reply Brief. On June 6, 2011, Appellants filed their Reply Brief. This case is now fully briefed.

GONZALES, THOMAS J. II v. Franchise Tax Board	
San Francisco Superior Court Case No. CGC06454297 Filed - 07/18/06	
Court of Appeal, 1 <sup>st</sup> Appellate District Case No. A122723 (Franchise Tax Board v. San Francisco Superior Court) (Real Party in Interest Tom Gonzales)	
California Supreme Court Case No. S176943	
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Martin A. Schainbaum, Esq.	Jeffrey Rich
Martin A. Schainbaum, PLC	

Issues:

1. Whether a \$142,000,000.00 capital loss from an abusive tax shelter is allowable.
2. Whether a taxpayer self-reporting under VCI is eligible for interest suspension pursuant to section 19116.
3. Whether the taxpayer is entitled to deduct legal expenses paid in connection with an investment.

Years: 2000 and 2001

Amount: \$12,374,510.00 Tax

Status: On June 6, 2011, the California Supreme Court issued a unanimous opinion holding that under the California Constitution there is no right to a jury trial in Tax Refund Lawsuits. On June 20, 2011, a Petition for Rehearing was filed by Gonzales. On June 22, 2011, the Court extended the time to consider the Petition until September 6, 2011. . On July 13, 2011, the Petition for Rehearing was denied. On July 13, 2011, the Remittitur was issued. The Jury Trial decision is now final. On July 21, 2011, a Status Conference Hearing was set for July 29, 2011. On July 29, 2011, Trial was set for September 12, 2011. On August 17, 2011, Notice of Motion and Motion for Judgment on the Pleadings; Request for Judicial Notice; Points and Authorities; Declaration by Cross Complainant FTB was filed. On August 26, 2011, Six Motions in Limine and a Declaration were filed in Support of FTB. On September 2, 2011, the Opposition to Plaintiff's Motion in Limine was filed by FTB. On September 2, 2011, the Memorandum of Points and Authorities in Reply to Opposition to Motion for Judgment on the Pleadings by FTB was filed. On September 2, 2011, the Opposition to FTB's Motion in Limine Number One was filed by Gonzales. On September 2, 2011, the Opposition to Defendant's Motion in Limine Number Two was filed. On September 2, 2011, the Opposition to Defendant's Motion in Limine Number Four was filed by Gonzales. On September 2, 2011, the Opposition to Defendant's Motion in Limine Number Five was filed by the Plaintiff Gonzales. On September 2, 2011, Opposition to Defendant's Motion in Limine Number Six was filed by Gonzales. On September 2, 2011 the Declaration of Bryant W. H. Smith was filed by Gonzales. On September 2, 2011, a Trial Brief was filed by Plaintiff. On September 2, 2011, the Designation of Deposition Transcript Extractions was filed by Plaintiff. On September 6, 2011, the Status Conference

was continued from September 9, 2011, to September 12, 2011. On September 6, 2011, a Motion for Judgment on the Pleadings and for Order Precluding Evidence regarding Tax Shelters was filed. The Request for Judicial Notice was continued from September 9, 2011, to September 12, 2011. On September 6, 2011, The Trial was continued from 9:00 to 1:30. On September 8, 2011, a Request for Leave to File a Supplemental Trial Brief was filed by Plaintiff. On September 8, 2011, the Objections to Plaintiff's Designation of Deposition Extractions was filed FTB. On September 6, 2011, a Request for Judicial Notice for Trial was filed by FTB. On September 8, 2011, a Declaration of Terre Davis in Support of Request for Judicial Notice for Trial was filed by FTB. On September 8, 2011, a Declaration of Jeffrey A. Rich in Support of Request for Judicial Notice for Trial was filed by FTB. On September 8, 2011, Non-California Authorities Cited in Support of Trial Brief was filed by FTB. On September 13, 2011, Closing Arguments were held and the matter submitted for Decision. The Court ruled in favor of F|TB on the Substantive Tax Shelter issue, holdinfg that a |Federal Court Decision on the same issue was binding upon |Plaintiff. The Court ruled in favor of the Plaintiff on the Penalty issue. On September 14, 2011, a Stipulation and Order to Return All Trial Exhibits & Depositions to Respective Counsel for Safe Keeping was filed. On September 22, 2011, an Order and a Fee Paid for Plaintiff's Counsel to Maintain and Preserve Documents Previously lodged with the Court was filed.

HYATT, GILBERT P. v. Franchise Tax Board Clark County Nevada District Court Case No. A382999 Nevada Supreme Court Case No. 47141 Nevada Supreme Court Case No. 53264 <u>Taxpayer's Counsel</u> Thomas L. Steffen & Mark A. Hutchison Hutchison & Steffen, H. Bartow Farr III	Filed - 01/06/98  <u>FTB's Counsel</u> James W. Bradshaw McDonald, Carano, Wilson LLP Las Vegas, Nevada
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Issues: 1. Whether the judgment issued by the (Nevada) Clark County District Court in favor of Gilbert Hyatt against FTB, including the award of \$250,000,000 in punitive damages was proper.

Years: N/A Amount: Approx. \$500,000,000

Status: **Nevada Supreme Court:** On June 1, 2010, FTB submitted Appellant's reply brief and Cross-Respondent's answering brief in the Nevada Supreme Court. On June 8, 2010, FTB submitted Appellant's Supplemental Opening Brief Regarding Costs, also in the Nevada Supreme Court. Both briefs were accepted and filed. Plaintiff requested an extension until September 13, 2010, to file a responsive brief. The Order Granting In Part Motions for Extensions of time was filed July 19, 2010. On September 13, 2010, Hyatt filed and served a Supplemental Answering Brief (regarding the award of his costs). FTB filed a Supplemental Reply Brief (regarding Hyatt's costs), on October 13, 2010. Mr. Hyatt previously filed a motion requesting to file a Sur-Reply to FTB's Reply Brief. On August 24, 2010, FTB filed an Opposition to Hyatt's motion. On October 4, 2010, after reviewing the Motion and Opposition, Justice Hardesty denied Hyatt's motion and directed the clerk of the court to return, unfiled, the proposed Sur-Reply submitted by Mr. Hyatt on August 13, 2010, and to strike the appendix to the Sur-Reply filed on August 16, 2010. On September 13, 2010, Hyatt filed a Supplemental Answering Brief Regarding Costs, including a two-volume Appendix of Exhibits. On October 12, 2010, FTB filed a

Supplemental Reply Brief regarding Costs. On January 20, 2011, FTB noticed and filed Respondent's embedded Answering and Opening Cross-Appeal Brief, Reply Cross-Appeal Brief, and Supplemental Answering Brief Regarding Costs in electronic form. On February 4, 2011, Hyatt filed a Notice of Submission of Hyatt's Embedded (i) Answering Brief and Opening Cross Appeal Brief; (ii) Reply Brief on Cross Appeal; and (iii) Answering Brief on Cost Appeal which was filed with the Nevada Supreme Court. The matter is now fully briefed and the Parties await the Nevada Supreme Court's Notice of Date and Time of Oral Argument.

JONES APPAREL GROUP, INC. & SUBSIDIARIES v. Franchise Tax Board Filed 04/26/10  
San Francisco Superior Court Case No. CGC10499083

Taxpayer's Counsel

Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts  
Silverstein & Pomerantz, LLP

FTB's Counsel

Jill Bowers

- Issues:
1. Whether California's Amendment of RTC 25128 in 1993 is precluded by California's participation in the Multistate Tax Compact.
  2. Whether California's denial of Plaintiff's claim for refund, premised upon the claim that the 1993 amendment to RTC 25128 is precluded by California's participation in the Multistate Tax Compact, violates the Constitution of the United States of America and the State of California.

Years: 12/31/01 through 12/31/03

Amount: \$755,730.00

Status: Summons and Complaint served on April 27, 2010. On June 15, 2010, Complex Litigation hearing previously set for August 6, 2010, was continued until October 7, 2010. The Complex Litigation hearing was held October 7, 2010, and the Court sustained the Demurrers to the Complaint without Leave to Amend. Please see summary for the Gillette Company & Subsidiaries v. Franchise Tax Board.

KIEWIT CORPORATION v. Franchise Tax Board

San Diego Superior Court Case No.37-2009-00087282-CU-MC-CTL

Filed - 04/09/09

Taxpayer's Counsel

FTB's Counsel

Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts  
Silverstein & Pomerantz, LLP

Tim Nader

- Issues:
1. Whether Plaintiff is entitled to a refund of taxes due to RTC section 24410 having been declared unconstitutional.
  2. Whether Plaintiff properly included gross receipts from securities as part of the sales factor in calculating its tax liability to California.
  3. Whether Plaintiff is entitled to a refund of taxes due to a claimed entitlement to Enterprise Zone hiring credits.
  4. Whether Plaintiff is entitled to a refund of taxes due to RTC section 24402 having been declared unconstitutional.
  5. Whether Plaintiff's sale of an interest in a partnership may properly be considered non-business income.

Years: 1996 through 2001

Amount: \$3,779,530.00 Tax

Status: Tentative Ruling for Demurrer/Motion to Strike issued in favor of FTB on May 13, 2010. On May 14, 2010, the Case Management Conference was continued to July 16, 2010. The civil court trial was scheduled to commenced April 8, 2011. On March 24, 2011, the Trial

Readiness Conference was rescheduled to October 14, 2011, and the Trial was rescheduled to November 4, 2011.

KIMBERLY-CLARK WORLD WIDE, INC. & SUBSIDIARIES v. Franchise Tax Board Filed 01/11/10  
San Francisco Superior Court Case No. CGC 10495916

Taxpayer's Counsel

Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts  
Silverstein & Pomerantz, LLP

FTB's Counsel

Lucy Wang

Issues: 1. Whether California's Amendment of Rev. & Tax. Code § 25128 in 1993 is precluded by California's participation in the Multistate Tax Compact.  
2. Whether California's denial of Plaintiff's claim for refund, premised upon the claim that the 1993 amendment to Rev. & Tax. Code § 25128 is precluded by California's participation in the Multistate Tax Compact, violates the U.S. Constitution and the California Constitution.

Years: 1993 through 2004

Amount: \$14,317,394.00

Status: On June 10, 2010, the Court ordered this case consolidated with The Gillette Company & Subsidiaries v. Franchise Tax Board, San Francisco County Superior Court Case No. CGC-10-495911. Please refer to status summary for The Gillette Company & Subsidiaries v. Franchise Tax Board.

WILLIAM E. KRUSE & TAMMY ROSS v. Franchise Tax Board  
Sacramento Superior Court Case No.34-2011-00098570

Filed 03/03/11

Taxpayer's Counsel

William E. Kruse  
Kruse Law Corporation

FTB's Counsel

Robert Asperger

Issues: 1. Whether Plaintiff's are entitled to their 2008 state income tax refund.

Years: 2008

Amount: \$2,231.00

Status: On March 3, 2011, the Summons and Complaint were filed. On May 26, 2011, Demurrer and Motion to Strike All or Portions of the Complaint and Supporting Memorandum of Points and Authorities in support thereof was filed by FTB. Hearing date is scheduled for October 21, 2011.

MARTIN A. LOGIES v. Franchise Tax Board  
Santa Clara County Superior Court Case No.111CV203752

Filed 07/01/11

Taxpayer's Counsel

Bradley A. Bening  
Willoughby, Stuart & Bening

FTB's Counsel

Marguerite Stricklin

Issues: 1. Whether Plaintiff is entitled to cancellation of the Preparer penalties.  
2. Whether Plaintiff is entitled to a refund of the \$21,112.50 that he has paid to date.

Years: 1997-2001

Amount: \$21,112.50



**Status:** On June 23, 2011, the Summons and Complaint were filed. On August 4, 2011, the Santa Clara County Superior Court approved the Stipulation and granted the Order to Transfer the case to Alameda County.

NEMAT & MARYAM MALEKSALEHI v. Franchise Tax Board Sacramento County Superior Court Case No. 34-2009-80000365 <u>Taxpayer's Counsel</u> Barzin Barry Sabahat, Esq. Anchor Law Firm	Filed 05/26/10 <u>FTB's Counsel</u> Jill Bowers
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**Issues:** 1. Whether the restitution of illegally obtained funds is deductible in the year restitution is made.  
2. Whether the taxpayers are able to take deductions from gross income derived from illegal activities under California Law.

**Years:** 12/31/01 **Amount:** \$115,870.00

**Status:** Summons and Complaint served on June 1, 2010. On April 14, 2011, a Memorandum of Points and Authorities in Support of Demurrer by Respondent FTB to First Amended Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and for recovery of overpaid taxes was filed. On April 14, 2011, a Notice of Hearing on Demurrer and Demurrer by Respondent FTB to First Amended Petition for Writ of Mandate and Complaint for Declaratory Relief and for Recovery of Overpaid Taxes was filed. On April 14, 2011, FTB's Request for Judicial Notice in Support of Demurrer to Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief was filed. On September 27, 2011, the Sacramento County Superior Court issued a Tentative Ruling, stating its intention to sustain FTB's Demurrer without Leave to Amend. Hearing on the matter is scheduled for October 5, 2011.

MICKELSEN, PAUL L. & PATRICIA A. v. Franchise Tax Board Los Angeles Superior Court Case No. BC385197 Court of Appeal, 2 <sup>nd</sup> Appellate District Case No.B213971 (consolidated with Du et al. & Shimmon) <u>Taxpayer's Counsel</u> Charles P. Rettig, Esq. Steven Toscher, Sharyn M. Fisk Hochman, Salkin, Retigg, Toscher & Perez, P.C.	Filed - 02/08/08 <u>FTB's Counsel</u> W. Dean Freeman
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**Issue:** Whether a taxpayer self-reporting under VCI is eligible for interest suspension pursuant to section 19116.

**Year:** 1999 **Amount:** \$537,178.00 Interest

**Status:** Please see summary for Du v Franchise Tax Board. A Preemptory Challenge was filed on March 23, 2011, pursuant to which Plaintiff disqualified Judge Mackey from presiding over this case. The Case Management Conference was scheduled for May 20, 2011. On May 20, 2011, a Minute Order was issued. The Minute Order states that the Final Status Conference is set for January 20, 2012, and the Court Trial is set for January 30, 2012.

MICROSOFT CORPORATION v. Franchise Tax Board  
San Francisco Superior Court Case No. CGC08471260  
Taxpayer's Counsel  
A. Pilar Mata, Esq,  
Sutherland, Asbill, & Brennan LLP

Filed - 01/22/08  
FTB's Counsel  
David Lew  
Lucy Wang

Issues:

1. Whether royalty income received from licensing agreements with Original Equipment Manufacturers should be sourced outside of California based upon costs of performance.
2. Whether receipts from trading marketable securities should be included in the sales factor.
3. Whether the value of trademarks, copyrights, patents and other intangible assets should be included in the property factor.
4. Whether the taxpayer should be allowed a deduction under Revenue and Taxation Code section 24402 for dividends received for the years at issue.
5. Whether the amnesty penalty under Rev. & Tax. Code § 19777.5 violates the due process clause of the U.S. Constitution, applies only retroactively, or attaches only after a liability becomes due and payable.

Years: 1995 and 1996

Amount: \$25,283,868.00 Tax

Status: Trial commenced on September 1, 2010, and further proceedings were scheduled to resume on October 14, 2010. On September 24, 2010, the Motion to Admit Counsel Pro Hac Vice was granted. On October 1, 2010, the Trial (closing arguments) was continued to November 4, 2010. On October 5, 2010, Per Diem Fees were deposited by Microsoft. On November 4, 2010, the Court heard Closing Arguments. On January 18, 2011, the trial court issued a Proposed Statement of Decision that ruled in favor of the FTB on each of the four causes of action set forth in Microsoft's complaint for tax refund. On January 28, 2011, Microsoft filed its Objections to the Court's Proposed Statement of Decision. On February 17, 2011, the Court issued its Statement of Decision in favor of FTB. On March 15, 2011, the Court ordered that Microsoft take nothing from FTB. The Notice of Entry of Judgment was filed on March 21, 2011. On May 12, 2011, a Notice of Appeal/Request for a Transcript was filed by Plaintiff. On May 26, 2011, the Directory Notice to Prepare Transcript was filed. On June 8, 2011, the Appeal Record was Certified and mailed to the Court of Appeal. Appellant's Opening Brief was filed on September 19, 2011.

EUGENE & PENELOPE MIDLOCK v. Franchise Tax Board  
Alameda County Superior Court Case No. RG10536311  
Taxpayer's Counsel  
Amy L. Silverstein  
Edwin Antolin  
Johanna W. Roberts

Filed 09/14/10  
FTB's Counsel  
Karen Yiu

Issues:

1. Whether the Franchise Tax Board properly assessed an Accuracy Related Penalty in this VCI Option 2 case?

Years: 2001

Amount: \$47,637.57

Status: Summons and Complaint served personally on September 14, 2010. The Initial Case Management Conference was set for January 27, 2011. The Answer to the Complaint was

filed October 29, 2010. On January 11, 2011, a Joint Case Management Statement was filed. A Tentative Case Management Order was filed on January 24, 2011. On March 25, 2011, the date of July 12, 2011, was reserved for a hearing on a Motion for Summary Judgment. On April 22, 2011, the date of August 18, 2011, was reserved for a hearing on a Motion for Summary Judgment. On April 19, 2011, An Application for a Continuance of Trial was filed by Plaintiff's. On April 22, 2011, a Hearing was held to reset the Trial to September 23, 2011. On April 22, 2011, a Hearing was held to reset the Motion for Summary Judgment for August 18, 2011. On June 2, 2011, Motion for Summary Judgment and an Index of Non-California Authorities in Support of Motion for Summary Judgment was filed. On June 3, 2011, the Motion for Summary Judgment was filed by Plaintiffs. On June 3, 2011, the Motion for Summary Judgment hearing was confirmed for August 18, 2011. On August 4, 2011, Plaintiff filed a Memorandum of Points and Authorities in Opposition to FTB's Motion for Summary Judgment. On August 4, 2011, the Declaration of Edwin P. Antolin in Opposition to FTB's Motion for Summary Judgment was filed. On August 4, 2011, Plaintiffs' Separate Statement of Disputed and Undisputed Material Facts in Opposition to Defendant FTB's Motion for Summary Judgment was filed. On August 12, 2011, Defendant FTB's Reply Brief in Support of Motion for Summary Judgment was filed. On August 12, 2011, Proposed Order Granting Defendant FTB's Motion for Summary Judgment was filed. On August 12, 2011, Defendant FTB's Objections to Plaintiff's Evidence and Request for Judicial Notice filed in Opposition to FTB's Motion for Summary Judgment was filed. On August 12, 2011, the Proposed Order Ruling on FTB's Objections to Plaintiffs' Evidence and Request for Judicial Notice filed in Opposition to FTB's Motion for Summary Judgment was filed. On August 12, 2011, Proposed Orders on Cross Motions for Summary Judgment were filed. On August 12, 2011, Plaintiff filed its Reply to Defendant's Opposition to Motion for Summary Judgment. On August 18, 2011, the Motions for Summary Judgment Hearing was held and the matter was taken under submission. On September 9, 2011, Plaintiff's Motion for Summary Judgment was denied. On September 21, 2011, Judgment was entered in FTB's favor.

JASBIR & TAJENDER NAGRA v. Franchise Tax Board San Francisco Superior Court Case No. CGC-10-506223 <u>Taxpayer's Counsel</u> John Youngquist Law Offices of John Youngquist	Filed 12/14/10  <u>FTB'S Counsel</u> Marguerite Stricklin
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Issues: 1. Whether FTB properly disallowed claimed gambling losses.

Years: 2006, 2007, 2008

Amount: \$40,670.00

Status: Summons and Complaint served personally on December 14, 2010. The Case Management Conference was held on May 20, 2011. On August 9, 2011, the Order to Continue Trial was filed. On August 9, 2011, the Declaration of Marguerite Stricklin in Support of Ex Parte Application to Continue Trial was filed. On August 9, 2011, the Stipulation to Continue Trial was filed. On August 19, 2011, an Ex Parte Application to Continue Trial Date pursuant to the Parties' Stipulation, and Memorandum of Points and Authorities in Support thereof, was filed. Trial held on August 22, 2011, and it was continued to November 14, 2011.

NORDSTROM, INC. v. Franchise Tax Board  
Los Angeles Superior Court Case No. BS133291

Taxpayer's Counsel

Amy L. Silverstein,

Law offices of Silverstein & Pomerantz, LLP

Taxpayer's Counsel

Edwin Antolin

Filed – 08/16/11

FTB's Counsel

Stephen Lew

- Issues:
1. Whether a Stay or Preliminary Injunction should be issued to prohibit the State from closing the VCI 2 period for Nordstrom, Inc. while the action is still pending.
  2. Whether the State should issue a Permanent Injunction that prohibits FTB from enforcing Sections 19777, 19774, 19761, 19762 and FTB Notice 2011-01.
  3. Whether FTB should declare that Section 19777 does not apply to Nordstrom, Inc for tax years 2002-2009.
  4. Whether Sections 19777 and 19774 in combination with VCI 2 violate Due Process.
  5. Whether FTB's making the Distribution Reorganization a listed transaction and FTB Notice 2011-01 is not valid.
  6. Whether FTB can declare Sections 19761 and 19762 invalid because those Sections violate Due Process by imposing unconstitutional conditions on taxpayers.
  7. Whether FTB should declare that "abusive tax avoidance transactions" for Section 19777 includes transactions listed by the IRS under IRC Section 6707(c)(1), but does not include transactions listed by FTB under Section 18407.
  8. Whether FTB should declare Section 19777 invalid because it violates Due Process and is excessively vague.
  9. Whether FTB should declare Sections 19774 and 19777 void because they violate Proposition 26.
  10. Whether FTB should declare Section 19774 invalid because it violates Due Process and denies the taxpayer review of the penalty imposed under that Section.

Year: 2002-2009

Amount  
\$

Status: Summons and Complaint filed August 18, 2011. Plaintiff's Application for an Expedited Hearing or its Cause of Action for Writ of Mandate precluding FTB from implementing VCI2 was granted. Nordstrom, Inc.'s Brief was to be filed on September 6, 2011, with FTB's Opposition to be filed on September 21, 2011. Nordstrom's Reply was due on September 26, 201, and the Matter heard on October 3, 2011. On August 25, 2011, Plaintiff filed a First Amended Complaint, which resulted in the October 3, 2011, Hearing being taken off the calendar. On September 26, 2011, FTB filed its Demurrer and supporting documents to Plaintiff's First Amended Complaint. The Demurrer is to be heard on November 15, 2011. On September 27, 2011, Plaintiff filed a Motion for Summary Judgment seeking to extend the closing date on VCI2 as to Plaintiff until this case is resolved on it's merits, that Motion is to be heard on October 21, 2011.

OBIORA, NOEL L. V Franchise Tax Board  
San Francisco Superior Court Case No. CGC10498757  
Taxpayer's Counsel  
Pro Per

Filed – 05/15/10  
FTB's Counsel  
Karen Yiu

Issues: 1. Whether Plaintiff properly and timely filed his tax returns for tax years 2005 and 2006.  
2. Whether the Franchise Tax Board properly withheld Plaintiff's claimed tax refund.

Year: 2005-2006

Amount: \$3,215.00

Status: April 16, 2010, Summons and Complaint filed. FTB filed Demurrer on September 3, 2010. On September 28, 2010, the Opposition to Demurrer to the Complaint was filed by Plaintiff. FTB filed Reply Brief in Support of Demurrer on October 1, 2010. On October 8, 2010, a Notice of Entry of Order/Notice of Ruling Sustaining Defendant's Demurrer was filed and a Notice of Entry of Order/Notice of Ruling Granting Motion to Reclassify Limited to Unlimited was also filed. The Answer to the First Amended Complaint was filed by FTB on October 29, 2010. Trial is set for August 29, 2011. On May 6, 2011, a Motion for Summary Judgment was filed by FTB. FTB also filed a Memorandum of Points and Authorities in Support of Motion for Summary Judgment. Also filed on May 6, 2011, was Evidence in Support of Motion for Summary Judgment filed by FTB. FTB also filed on May 6, 2011, a Request for Judicial Notice on the Motion for Summary Judgment. On May 6, 2011, FTB filed an Index of Non-California Authorities in Support of Motion for Summary Judgment and a Proof of Service by U.S. Mail. On May 12, 2011, Notice of Motion and Motion for Summary Judgment, Memorandum of Points and Authorities in Support of Plaintiff's MSJ, Plaintiff's Statement of Undisputed Facts, Index of Non California Authorities in Support of MSJ, and Plaintiff's Evidence in Support of the Motion for Summary Judgment was filed. On May 12, 2011, a Preemptory Challenge of Honorable Peter J. Busch was filed by Plaintiff. FTB's Motion for Summary Judgment was to be heard on July 25, 2011. Hearing on Plaintiff's Motion for Summary Judgment was to be on heard on July 26, 2011. Karen Yiu, Deputy Attorney General has served a Motion for Sanctions regarding Plaintiff's Motion for Summary Judgment if Plaintiff does not withdraw his Motion for Summary Judgment by June 30, 2011. On July 11, 2011, an Opposition to FTB's Motion for Summary Judgment was filed by the Plaintiff, a Statement of Undisputed Facts in Opposition to Motion for Summary Judgment was filed by Plaintiff. On July 11, 2011, the Plaintiff filed a Declaration of Noel Obiora in Opposition to FTB's Motion for Summary Judgment and the Plaintiff filed a Declaration in Opposition to FTB's Motion for Sanctions. Plaintiff filed a Memorandum of Points and Authorities in Response to FTB's Motion for Sanctions on July 12, 2011. On July 12, 2011, FTB filed a Request for Judicial Notice in Opposition to Plaintiff's Motion for Summary Judgment. An Index of Non-California Authority in Opposition to Plaintiff's Motion for Summary Judgment was filed on July 12, 2011. Objections to Plaintiff's Evidence filed in Support of Motion for Summary Judgment was filed on July 12, 2011. A Memorandum of Points and Authorities in Opposition to Motion for Summary Judgment was filed July 12, 2011. Thereafter, the Court transferred the parties' Motions for Summary Judgments and FTB's Motions for Sanctions to the other Law and Motion department due to the Preemptory Challenge. The Court denied the Motion for Sanctions. On July 26, 2011, the Court adopted it's Tentative Ruling and Granted FTB's Motion for Summary Judgment. The Notice of Entry of Order granting FTB's Motion for Summary Judgment and the Notice of Entry of Order denying Plaintiff's Motion

for Summary Judgment were filed on July 26, 2011. On August 25, 2011, a Notice of Appeal and Request for Transcript was filed by Plaintiff. On September 7, 2011, a Notice of Default on Appeal was sent to Appellant. On September 8, 2011, a Request for the Transcript was filed. Case Management Conference scheduled for October 28, 2011.

PERSONAL SELLING POWER, INC. v. Franchise Tax Board		
Alameda Superior Court Case No. RG09462520		
<u>Taxpayer's Counsel</u>	<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Michael L. Corman	Amy L. Silverstein, Edwin Antolin	Marguerite C. Stricklin
Law offices of Michael L. Corman Silverstein & Pomerantz, LLP		

Issues:

1. Does the sale of advertising to be printed qualify as a sale of tangible property for purposes of Public Law 86-272?
2. Whether Public Law 86-272 applies only to a net income tax, or both a net income tax and the minimum tax under Revenue and Taxation Code section 23153.

Year: 2002 Amount  
\$908.05 Tax

Status: Case Management Conference held and an Order issued on September 2, 2010. Case Management Conference continued to November 11, 2010. On November 8, 2010, the Case Management Conference was continued to February 16, 2011. On January 11, 2011, a Motion for Judgment on the Pleadings was filed. The Motion for Judgment on the Pleadings Hearing was confirmed for February 16, 2011 and later continued to April 13, 2011. On January 20, 2011, an Amended Notice of Motion was filed. On February 9, 2011, the Case Management Conference was continued to April 28, 2011. On July 29, 2011, The Case Management Conference was reset for October 19, 2011. On July 29, 2011, Hearing on Motion for Judgment on the Pleadings was reset to October 19, 2011.

THE PROCTER & GAMBLE MANUFACTURING CO. & AFFILIATES v. Franchise Tax Board	
San Francisco Superior Court Case No. CGC10495912	
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts	Lucy Wang
Silverstein & Pomerantz, LLP	

Issues:

1. Whether California's Amendment of Rev. & Tax. Code § 25128 in 1993 is precluded by California's participation in the Multistate Tax Compact.
2. Whether California's denial of Plaintiff's claim for refund, premised upon the claim that the 1993 amendment to Rev. & Tax. Code § 25128 is precluded by California's participation in the Multistate Tax Compact, violates the U.S. Constitution and the California Constitution.

Years: 06/30/99 through 06/30/05 Amount: \$11,837,747.00

Status: On June 10, 2010, the Court ordered this case consolidated with The Gillette Company & Subsidiaries v. Franchise Tax Board, San Francisco County Superior Court Case No. CGC-10-495911. Please refer to status summary for The Gillette Company & Subsidiaries v. Franchise Tax Board.

QUELLOS FINANCIAL ADVISORS, LLC v. Franchise Tax Board

San Francisco Superior Court Case No. CGC09487540

Taxpayer's Counsel Taxpayer's Counsel

Amanda J. Pedvin, Matthew D. Lerner, Esq.

Filed – 04/20/09

FTB's Counsel

Anne Michelle Burr

- Issues:
1. Whether the promoter penalty provided for in RTC section 19177 violates the due process clause of the United States and California Constitutions.
  2. Whether the promoter penalty provided for in RTC section 19177 violates the commerce clause contained within the United States Constitution.
  3. Whether the penalty provisions provided for in RTC section 19177 apply to activities prior to calendar year 2005.
  4. Whether the proper measure of the promoter penalty is \$1,000 per transaction or 50% of the gross income derived from the improper activity.
  5. Whether the proper measure of the promoter penalty may include income not received by the Person/entity against whom the penalty has been assessed.

Years: N/A

Refund sought \$3,473,437.50 Penalty

Status: On July 22, 2010, FTB filed its Joint Case Management Conference Statement. Mandatory Settlement Conference was scheduled for October 25, 2010. The Opening Trial Briefs originally scheduled to be filed on October 27, 2010, were continued to December 7, 2010. The Reply Briefs originally scheduled to be filed on November 29, 2010, were continued to January 11, 2011. On December 2, 2010, a Joint Stipulation of Facts was filed by FTB. A Notice of Revised Trial Briefing Schedule was filed by Quellos on December 2, 2010. Trial was continued from December 7, 2010, to February 1, 2011 to March 1, 2011. On January 18, 2011, Plaintiff's filed a Reply Brief, Request for Judicial Notice, Appendix of Non-California Authorities. Also on January 18, 2011, FTB filed its Reply to Plaintiff's Opening Trial Brief, and Objection to Plaintiff's Request for Judicial Notice. The Trial that was scheduled for March 1, 2011, commenced on March 28, 2011 and was continued to April 25, 2011. On April 8, 2011, the FTB filed a Second Supplemental Request for Judicial Notice. On April, 21, 2011, an Objection to Defendant's Second Supplemental Request for Judicial Notice was filed by Plaintiff. A Declaration by Amanda Pedvin Varma in Support of the Objection to Defendant's Second Supplemental Request for Judicial Notice was filed on April 21, 2011. On April 25, 2011, the Response to Objection to Defendant's Second Supplemental Request for Judicial Notice was filed. On May 12, 2011, Post-Trial Brief on Plaintiff's Facial Due Process Challenge was filed by FTB. On May 13, 2011, Response to Supplemental Request for Judicial Notice was filed by Quellos. Defendant FTB's Proposed Statement of Decision and Declaration of Service were filed June 17, 2011. The Parties have submitted proposed Statement of Decision and now the Judge will review the case and issue his own Statement of Decision. The Case Management Conference which was set for September 12, 2011, was continued to November 16, 2011.

QUELLOS GROUP, LLC v. Franchise Tax Board  
San Francisco Superior Court Case No. CGC10501299  
Taxpayer's Counsel    Taxpayer's Counsel  
Amanda J. Pedvin    Matthew D. Lerner, Esq.  
Steptoe & Johnson, LLP    Steptoe & Johnson, LLP

Filed – 07/20/10  
FTB's Counsel  
Anne Michelle Burr  
Christopher Haskins

- Issues:
1. Whether the promoter penalty provided for in RTC section 19177 violates the due process clause of the United and California Constitution
  2. Whether the promoter penalty provided for in RTC section 19177 violates the commerce clause contained within the United States Constitution.
  3. Whether the penalty provisions provided for in RTC section 19177 apply to the activities prior to calendar year 2005.
  4. Whether the proper measure of the promoter penalty is \$1,000, per transaction or 50% of the gross income derived from improper activity.
  5. Whether the proper measure of the promoter penalty may include income not received by person/entity against whom the penalty has been assessed.

Years:    2001

Refund sought: \$569,807.25

Status:    Summons and Complaint filed July 23, 2010. On July 30, 2010, an Application for Approval of Complex Litigation Designation was filed. On August 3, 2010, Defendant filed both an Answer to the Complaint and its Cross Complaint. On August 27, 2010, Defendant filed a Joint Case Management Conference Statement. On August 30, 2010, Quellos Group LLC filed an Answer to Cross Complaint. On October 6, 2010, a Notice of New Trial Date and New Trial Briefing Schedule was filed by FTB. (See above). The Complex Litigation Case Management Conference was continued to February 1, 2011. Although not formally consolidated, this case is proceeding in tandem with Quellos Financial Advisors, LLC v. Franchise Tax Board. On January 18, 2011, Plaintiff filed a Reply Brief and an Appendix of Non-California Authorities and a Request for Judicial Notice. FTB filed an Objection to Plaintiff's Request for Judicial Notice and a Reply to Plaintiff's Opening Brief. Trial was set for March 1, 2011, and commenced on March 28, 2011, and was continued to April 25, 2011. On April 8, 2011, the FTB filed a Second Supplemental Request for Judicial Notice. On April, 21, 2011, an Objection to Defendant's Second Supplemental Request for Judicial Notice was filed by Plaintiff. A Declaration by Amanda Pedvin Varma in Support of the Objection to Defendant's Second Supplemental Request for Judicial Notice was filed on April 21, 2011. On April 25, 2011, the Response to Objection to Defendant's Second Supplemental Request for Judicial Notice was filed. On May 12, 2011, Post-Trial Brief on Plaintiff's Facial Due Process Challenge was filed by FTB. On May 13, 2011, Response to Supplemental Request for Judicial Notice was filed by Quellos. On May 26, 2011, Response to Defendant's Post-Trial Brief on Facial Due Process Challenge was filed by Plaintiff. Defendant FTB's Proposed Statement of Decision and Declaration of Service were filed June 17, 2011. The Parties have submitted Proposed Statements of Decision and now the Judge will review the case and issue his own Statement of Decision. The Case Management Conference that was set for September 12, 2011, was continued to November 16, 2011.



RB HOLDINGS (USA) INC. & SUBSIDIARIES v. Franchise Tax Board San Francisco Superior Court Case No. CGC10496438 <u>Taxpayer's Counsel</u> Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts Silverstein & Pomerantz, LLP	Filed 01/29/10  <u>FTB's Counsel</u> Lucy Wang
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**Issues:**

1. Whether California's Amendment of Rev. & Tax. Code § 25128 in 1993 is precluded by California's participation in the Multistate Tax Compact.
2. Whether California's denial of Plaintiff's claim for refund, premised upon the claim that the 1993 amendment to Rev. & Tax. Code § 25128 is precluded by California's participation in the Multistate Tax Compact, violates the U.S. Constitution and the California Constitution.

**Years:** 2002 through 2004 Amount: \$145,240.00

**Status:** On June 10, 2010, the Court ordered this case consolidated with The Gillette Company & Subsidiaries v. Franchise Tax Board, San Francisco County Superior Court Case No. CGC-10-495911. Please refer to status summary for The Gillette Company & Subsidiaries v. Franchise Tax Board.

SHIMMON, EDWARD & ANNELIESE v. Franchise Tax Board Los Angeles Superior Court Case No. BC363822 Court of Appeal, 2 <sup>nd</sup> Appellate District Case No. B213971 (consolidated with Du et al. & Mickelsen) <u>Taxpayer's Counsel</u> Charles P. Rettig, Sharyn M. Fisk Hochman, Salkin, Rettig, Toscher & Perez, P.C.	Filed – 12/22/06  <u>FTB's Counsel</u> W. Dean Freeman
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**Issue:** Whether a taxpayer filing under the first option of VCI was eligible for the interest suspension provided by section 19116.

**Year:** 1999 Amount: \$515,422.00 Interest

**Status:** Please see Summary for Du v Franchise Tax Board.

SIGMA-ALDRICH, CORP. & SUBSIDIARIES v. Franchise Tax Board San Francisco Superior Court Case No. CGC10496437 <u>Taxpayer's Counsel</u> Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts Silverstein & Pomerantz, LLP	Filed 01/29/10  <u>FTB's Counsel</u> Lucy Wang
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**Issues:**

1. Whether California's Amendment of Rev. & Tax. Code § 25128 in 1993 is precluded by California's participation in the Multistate Tax Compact.
2. Whether California's denial of Plaintiff's claim for refund, premised upon the claim that the 1993 amendment to Rev. & Tax. Code § 25128 is precluded by California's participation in the Multistate Tax Compact, violates the U.S. Constitution and the California Constitution.

**Years:** 1998 through 2004 Amount: \$1,607,168

**Status:** On June 10, 2010, the Court ordered this case consolidated with The Gillette Company & Subsidiaries v. Franchise Tax Board, San Francisco County Superior Court Case No. CGC-10-495911. Please refer to status summary for The Gillette Company & Subsidiaries v. Franchise Tax Board.

TAIHEYO CEMENT U.S.A., INC. v. Franchise Tax Board  
Los Angeles Superior Court Case No. BC422623  
Court of Appeal, 2<sup>nd</sup> Appellate District Court Case No. B226067

Filed – 11/12/09

*Taxpayer's Counsel*

Marty Dakessian

Reed Smith LLP

*FTB's Counsel*

Marta Smith

**Issues:**

1. Whether plaintiff is entitled to enterprise zone sales and use tax credits for certain items it claims it “placed in service” during the tax years in question. In particular, the issue is whether the phrase “placed in service” refers to depreciable capital assets or “expensed items” usually consumed within a year of their initial use.
2. Whether the assessment of an Amnesty penalty in this case is factually warranted.
3. Whether the assessment of an Amnesty penalty in this case violates due process protections afforded the taxpayer under the constitutions of the United States of America and/or the state of California.
4. Whether FTB’s interpretation/enforcement of provisions contained within the enterprise zone credit statute constitute underground regulations.
5. Whether plaintiff is entitled to attorneys fees under the provisions of the Revenue and Taxation Code and/or the private attorney general doctrine.

**Years:** 1998 and 1999

**Amount:** \$4,980,165.00

**Status:** FTB’s Motion for Judgment on the Pleadings was granted on July 1, 2010. On July 23, 2010 the Notice of Appeal was filed. The Notice of Entry of Order was filed on July 26, 2010, and a second Notice of Appeal was filed on July 26, 2010. The Court sent a Notice to Reporter to prepare the Transcript for appeal purposes on August 18, 2010. On November 16, 2010, a Request for Copies was filed by FTB. Appellant's Opening Brief was filed early January 2011. Respondent's Brief filed April 6, 2011. Appellant's Reply Brief was filed June 24, 2011. This case is now fully briefed.

Irene Tritz v. John Potter  
United States Federal District Court Central District  
SACV10-182DOC (RNBx)  
Ninth Circuit Court of Appeal  
10-56967

Filed – 02/12/10

*Taxpayer's Counsel*

Irene Tritz

Pro Se

*FTB's Counsel*

Marla Markman

**Issues:**

1. Whether Plaintiff's post-judgment settlement of damages award against her former employer (U.S. Postal Service), which she contends she was led to believe by the Postal Service and its counsel was non-Taxable, may be set aside on any of the following bases:

- A. Fraud/Misrepresentation;
- B. Voidable Contract due to undue Influence
- C. Breach of Settlement Agreement
- D. Discrimination
- E. Retaliation
- F. Hostile Environment
- G. Interference by the Court
- H. Final Contract Violates Rights of Others
- I. Conspiracy

Years:

Amount: Not Specified

Status: First Amended Complaint filed June 4, 2010. First Amended Complaint has not yet been properly served upon FTB or Selvi Stanislaus. Notice of Appeal filed December 10, 2010. On December 15, 2010, a Time Schedule Order was filed in the United States Court of Appeals for the Ninth Circuit. On January 25, 2011, the Court sent a letter to Plaintiff/Appellant requesting money to cover the docket fees. Appellant filed an Informal Brief with the Ninth Circuit Court of Appeal on May 20, 2011. On June 22, 2011, the Notice of Appearance of Counsel or Re-Assignment of Counsel Within the Same Office was filed. On June 22, 2011, the Brief of Appellee Selvi Stanislaus, Executive Officer of the FTB, was filed. On June 29, 2011, Appellant's Informal Reply to Appellee Brief was filed. On July 14, 2011, seven copies of the Answering Brief were filed.

VENTAS FINANCE I, LLC v. Franchise Tax Board	
San Francisco Superior Court Case No. 05440001	Filed - 04/01/05
Court of Appeal, 1 <sup>st</sup> Appellate District Case No. A116277 & Case No. A117751	
California Supreme Court Case No. S166870	
U.S. Supreme Court Case No. 08-1022	
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Amy L. Silverstein, Edwin Antolin	Marguerite Stricklin
Silverstein & Pomerantz, LLP	

Issue: Whether Revenue and Taxation Code section 17942, which imposes a tax based upon the "total income from all sources reportable to this state" of LLC, registered with the Secretary of State, violates the Due Process Clause and Commerce Clause.

Years: 2001 through 2003

Amount: \$29,580.00 Tax

Status: On August 23, 2010, the case was assigned to Judge Paul H. Alvarado, with a Case Management Conference Hearing set for September 17, 2010. On September 3, 2010, both parties filed a Case Management Statement requesting one day for trial. On September 19, 2010, a Case Management Conference was held and continued until December 6, 2010. On October 4, 2010, this case was added to the Calendar for Settlement Conference Hearing, which is set for December 1, 2010. On November 19, 2010, both the Plaintiff and Defendant filed a Case Management Statement. On November 22, 2010, An Order granting Plaintiff's Request to be Excused from Appearance at Settlement Conference was granted. On December 1, 2010 a Settlement Conference was held but the case was not resolved. The Minutes for that Proceeding became available on December 1, 2010. On December 6, 2010, the Case Management Conference was continued to February 28, 2011. On February 28, 2011, the Court ordered a Hearing on the Remaining Attorney's Fees issue be scheduled for May 18, 2011. Plaintiff's Opening Brief is

to be filed on April 7, 2011. FTB's Opposition is due April 23, 2011, and Plaintiff's Reply Brief is due on May 12, 2011. On May 7, 2011, a Notice and Motion for Attorney's Fees and Costs and Points and Authorities was filed along with a Request for Judicial Notice by Ventas. Trial now set for May 18, 2011. On April 29, 2011, the FTB filed an Opposition to Motion for Attorney's Fees and Costs. FTB also filed on April 29, 2011, the Declarations of William C. Hilson and Diedre O'Connor. On May 4, 2011, Opposition to Plaintiff's Motion for Attorney's Fees and Costs on Remand was filed by FTB. On May 4, 2011, a Request for Judicial Notice in Support of Opposition for Attorney's fees and Costs was filed by FTB. On May 4, 2011, the Declaration of Service of Opposition and Request for Judicial Notice was filed by FTB. On May 12, 2011, a Reply Brief in Support of Plaintiff's Motion for Attorneys' Fees and Costs on Remand was filed by Ventas. On May 12, 2011, a Reply Declaration of Edwin P. Antolin in Support of Plaintiff's Motion for Attorneys' Fees and costs on Remand was filed by Plaintiff. On May 12, 2011, a Reply Declaration of Richard M. Pearl in Support of Plaintiff's Motion for Award of Reasonable Attorneys' Fees and Costs was filed. The Case Management Conference of May 18, 2011, is Off Calendar. On May 18, 2011, the Trial on the Motion for Attorneys' Fees and Costs was held and continued to June 20, 2011. On June 2, 2011, a Declaration of Service of Opposition to Plaintiff's Motion for Attorney's Fees and Costs on Remand was filed by FTB. On June 2, 2011, a Request for Judicial Notice regarding the Proposed Order Awarding Attorney's Fees was filed by FTB. On June 14, 2011, The Objections to Defendant's Request for Judicial Notice regarding the Proposed Order Awarding Attorneys Fees and Costs was filed by Ventas. A Declaration of Richard M. Pearl in Support of Plaintiff's Objections to Defendant's Request for Judicial Notice was filed on June 14, 2011. On June 24, 2011, the Notice and Motion on Attorney's Fees and Cost on Remand was submitted for Decision. On July 18, 2011, the Order Awarding Plaintiff's Attorneys Fees and Costs on Remand was filed. No Appeal were filed by either side.